

# West Bountiful City

Request for Interest and Qualifications

**For**

City Prosecutor Services

**October 1 , 2010**

October 1, 2010

West Bountiful City invites you to respond to this Request for Interest and Qualifications to serve as the City Prosecutor, performing the following functions:

- Represent the City in litigation initiated to enforce ordinances
- Represent the City at the Davis County Justice Court for City matters
  - Routine traffic violations
  - DUI
  - Other violations
- Advise the Mayor, City Council, City Administrator and staff on enforcement issues
- Coordinate with the City Attorney for the provision of legal services to the City
- Vigorously represent the residents of the City to promote fairness and preserve the rights of those who respect the ordinances, statutes, and laws of West Bountiful City, the State of Utah, and the United States as they apply.

You are responsible to ensure that this information is shared with all of your business partners who are jointly responding with you. The RFIQ also outlines the information that should be included in your proposal. The proposal must be submitted by **4:00 P.M. on Thursday, October 21, 2010** to:

Heidi Voordeckers  
City Recorder / Auditor  
West Bountiful City  
550 N 800 W  
West Bountiful, Utah 84087

Please direct all questions to Mr. Howe (801) 292-4486 Ext. 117 or [chowe@westbountiful.utah.gov](mailto:chowe@westbountiful.utah.gov)

We appreciate the effort you are making to provide a comprehensive proposal and look forward to receiving your response.

Very truly yours,

Craig S. Howe  
City Administrator

# West Bountiful City, Utah

## Request for Interest / Qualifications

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**West Bountiful City  
Request for Interest / Qualifications  
Applicant Contact Information**

**Prime Proposer**

Prime Company Name \_\_\_\_\_

Prime Address \_\_\_\_\_

Prime City/State/Postal Code \_\_\_\_\_

Prime Contact Person \_\_\_\_\_

Prime Contact Phone \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_

Prime Contact Email \_\_\_\_\_

**1<sup>st</sup> Partner Proposer associated with Prime on this project**

Partner Company Name \_\_\_\_\_

Partner Address \_\_\_\_\_

Partner City/State/Postal Code \_\_\_\_\_

Partner Contact Person \_\_\_\_\_

Partner Contact Phone \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_

Partner Contact Email \_\_\_\_\_

**2<sup>nd</sup> Partner Proposer associated with Prime on this project**

Partner Company Name \_\_\_\_\_

Partner Address \_\_\_\_\_

Partner City/State/Postal Code \_\_\_\_\_

Partner Contact Person \_\_\_\_\_

Partner Contact Phone \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_

Partner Contact Email \_\_\_\_\_

**3<sup>rd</sup> Partner Proposer associated with Prime on this project**

Partner Company Name \_\_\_\_\_

Partner Address \_\_\_\_\_

Partner City/State/Postal Code \_\_\_\_\_

Partner Contact Person \_\_\_\_\_

Partner Contact Phone \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_

Partner Contact Email \_\_\_\_\_

## West Bountiful City Proposal Checklist

The following checklist is offered as a guide to assist you in ensuring that your proposal addresses the major requirements of this Request for Proposals (RFIQ). However, it is not intended as a complete list of all proposal requirements. Proposers are cautioned to review the requirements of each and every section of the RFIQ to ensure their proposals are totally responsive.

<b>Task</b>	<b>RFIQ Ref. Page</b>	<b>Proposal Ref. Page</b>
Proposer Contact Information	ii	_____
Number of Proposal & Documentation Copies	5	_____
Prime Firm/SubFirm Responsibility	7	_____
Understanding of City's Requirements	3	_____
Proposal Completeness and Format	2	_____
Information About Your Company	3	_____
Client References	3	_____
Information About Proposed Project Team	3	_____
Pricing	3	_____
Standard Services Agreement	A-1	_____
Agreement Exceptions		_____

# **1 Proposal Information**

## **1.1 General**

### **Introduction**

This section of the Request for Interest / Qualifications (RFIQ) outlines the proposal submission requirements and provides information on the desired format for proposals. It contains the instructions governing the proposal to be submitted and the material to be included therein, including mandatory requirements (which must be met to be eligible for consideration) and other requirements to be met in each proposal.

### **Issuing Office**

The City Administrator has issued this RFIQ on behalf of the West Bountiful City Council.

### **Purpose**

This RFIQ is intended to solicit proposals for the following services:

- Represent the City in litigation initiated to enforce ordinances
- Represent the City at the Davis County Justice Court for City matters
  - Routine traffic violations
  - DUI
  - Other violations
- Advise the Mayor, City Council, City Administrator and staff on enforcement issues
- Coordinate with the City Attorney for the provision of legal services to the City
- Vigorously represent the residents of the City to promote fairness and preserve the rights of those who respect the ordinances, statutes, and laws of West Bountiful City, the State of Utah, and the United States as they apply.

### **Invitation to Propose**

West Bountiful City is hereby inviting prospective proposers who have experience in the public sector and are deemed most qualified to provide the desired services and solutions.

### **Incurring Costs**

West Bountiful City is not liable for any costs incurred by proposers prior to issuance of an agreement, contract or purchase order. Costs of developing the proposals, oral presentations or any other such expenses incurred by the proposer in responding to the RFIQ are entirely the responsibility of the proposer, and shall not be reimbursed in any manner by West Bountiful City.

### **Comprehensive Services**

The desired contract is one in which the proposer delivers comprehensive prosecution services for the City. The City reserves the right to augment the services of the Prosecutor with additional firms for special cases which may require specific skills or knowledge or include other extraordinary circumstances.

## 1.2 Calendar of Events

The following table outlines the City's planned calendar of major events related to the RFIQ distribution, proposal submission, evaluation, and selection processes. All times are stated in Mountain Time.

1.	RFIQ advertised for prospective proposers	October 1, 2010
2.	Last date for submission of written questions (4:00 P.M.)	October 10, 2010
3.	Responses to proposer questions	October 17, 2010
4.	Proposal submission deadline (4:00 P.M.)	October 21, 2010
5.	Select final three (3) proposers	October 25, 2010
6.	Conduct reference checks	October 22-26, 2010
7.	Perform oral interviews	October 28 & 29, 2010
8.	Select preferred proposer	1-2 weeks later

The City reserves the right to amend the above schedule as necessary.

## 1.3 Proposal Format

### Format of Proposal

Please minimize the bulk of original writing and make maximum use of your standard brochures and materials. Your proposals must follow the format prescribed below and must include the requested information, including the Proposal Pricing Form. **Failure to complete and furnish all information requested in the form and format specified may result in disqualification.**

<u>SECTION</u>	<u>TITLE</u>
I.	Executive Summary
II.	Understanding of City's Requirements
III.	Proposer Qualifications, Experience and References
IV.	Proposed Team Qualifications and Experience
V.	Requirements of the City in Providing Prosecution Services.



VI. Client References  
VI. Professional Services Agreement Exceptions  
APPENDICES (Organization Left to Proposers)

Feel free to include any material that will add to the persuasiveness of your recommended approach. However, if the materials do not directly address the stated requirements, please include them in an appendix or separate volume. We will review and consider all material submitted, but want to concentrate our efforts on the material that directly addresses the City's stated needs.

Please restrict the body of your proposal to a maximum of 15 pages. Do not feel obligated to provide all 15 pages. Appendices are in addition to the 15 pages.

As noted later in this Section, required pricing forms are to be submitted in a separate, sealed envelope.

**Understanding of City's Requirements**

Proposals should indicate the Proposer's understanding of the City's goals and expectations and must respond to all requirements of this RFIQ.

**Information about Your Company**

Please provide information that will enable us to evaluate your company's financial stability, track record, and support capabilities. We require that you include the following:

- (1) The two most recent audited financial statements;
- (2) Ownership of your company;
- (3) Number of years in business;
- (4) Number of attorneys available to service the City;
- (5) Total number of support employees;
- (6) Other resources available to support West Bountiful City;
- (7) Professional liability insurance limits and deductibles; and
- (8) Average number of active clients over the past 2 years to determine the support/client base ratio.

**Information about Your Proposed Project Team**

Please provide information that will enable us to evaluate your proposed project team and staff resources. We require that you include the following: (1) resumes for your proposed key personnel and (2) estimates of participation in days or hours by individual for all proposed personnel.

**Client References**

Please provide a list of at least three paying Municipal customers who are or have used your services. The list should provide a contact name, telephone number, length of time using your services, and a description of the clients' general demographics (population, cases per month, etc.)

**Pricing**

Total cost of services (including out-of-pocket expenses) will be a key factor in the evaluation of your proposal. *Your proposal must provide price commitments for a period of 90 days following the proposal due date.* Please state the unit price for each separate line item quoted. In case of a discrepancy between the totals shown on the price form and the actual sum of the item totals, the lower item or totals shall prevail. The City welcomes various forms of compensation beyond straight hourly fees, to include, but not limited to, fixed rates for services. Please clearly define your pricing proposal and the associated services that are covered. Be specific about any anticipated services that are NOT covered or considered OPTIONAL.

**Proprietary Information**

Any restrictions on the use of information contained within a proposal must be clearly stated in the proposal itself. Proprietary information submitted in the response to this RFIQ will be handled in accordance with applicable West Bountiful City policies and the Utah State statutes, including the Governmental Records Access Management Act (GRAMA). The City shall incur no liability due to release of information from a proposal labeled "proprietary" or "confidential." Separate proposer documentation submitted in support of proposals will be treated as proprietary and confidential, if properly labeled as such.

**Response Material Ownership**

All material submitted regarding and in response to this RFIQ becomes the property of West Bountiful City and will only be returned to the proposer at the City's option. Any person may review responses after final selection has been made.

**1.4 Clarifications****Proposer Clarifications**

Any content or technical questions should be directed to:

Craig S. Howe  
City Administrator  
(801) 292-4486 Ext. 117  
[chowe@westbountiful.utah.gov](mailto:chowe@westbountiful.utah.gov)

Any questions regarding procurement procedures should be directed to:

Heidi Voordeckers  
City Recorder / Auditor  
(801) 292-4486 Ext. 107  
[Hvoordeckers@westbountiful.utah.gov](mailto:Hvoordeckers@westbountiful.utah.gov)

### **City Clarifications**

The City reserves the right to obtain clarification of any point in a proposer's proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a proposer to respond to such a request for additional information or clarification may result in rejection of the proposer's proposal.

## **1.5 Proposal Submission**

The proposal package shall be delivered to:

Heidi Voordeckers  
City Recorder / Auditor  
550 N 800 W  
West Bountiful, Utah 84087  
(801) 292-4486 Ext. 107

Proposals must be received prior to **4:00 P.M. Mountain Time on October 21, 2010**. Proposers mailing their proposals must allow sufficient delivery time to ensure receipt of their proposal by the time specified.

Three (3) copies of the proposal, two (2) copies of all supporting proposer documentation should be sealed in a package(s) showing, in addition to the address shown above, the following information on the outside:

1. Proposer's Name, Contact, Phone number, and Email address
2. Proposal – West Bountiful City
3. Proposal due: October 21, 2010 @ 4:00 pm.
4. PDF electronic format may be provided on CD Rom (Optional)

The proposal must be signed by a person(s) legally authorized to bind the proposer.

Late proposals will not be accepted or considered.

## **1.6 Selection Process**

### **Evaluation**

The City's Proposal Evaluation Team will evaluate all proposals submitted as a result of this RFIQ. This team will present its recommendation to the City Administrator and City Council for final selection prior to the required contract approval process of the City. In order to receive consideration, responses must address all aspects of the requirements specified in the Proposal Response Forms. The following criteria and related weightings will be used to evaluate the responses:

<b>Proposer Qualifications</b>	
Prime Proposer	25
Comparable Municipal Services	10
Previous Experience w/Partners	5
Proposer Stability	5
<b>Proposer Qualifications Total</b>	<u>45</u>
 <b>Service and Support</b>	
Administrative Support	25
Availability	10
 <b>Costs</b>	 <u>20</u>
<b>Grand Total</b>	100

### **Acceptance of Proposal**

Failure to furnish all information requested in the form and format specified may disqualify a proposal. The contents of the proposal of the successful proposer will become contractual obligations, if acquisition action ensues. Failure of the successful proposer to accept these obligations in a professional services agreement, or similar acquisition instrument may result in cancellation of the award and such proposer may be removed from future solicitations.

### **False or Misleading Statements**

If, in the opinion of the City, a proposal contains false or misleading statements or references, it may be rejected.

### **Other Reservations**

The City reserves the right to accept or reject any and all proposals.

### **Rejection of Proposals**

Issuance of this RFIQ in no way constitutes a commitment by West Bountiful City to award a contract. If it is deemed in the best interest of the City to do so, West Bountiful City reserves the right to reject any or all proposals and to waive any informalities and minor irregularities in proposals received or to accept any portion of a proposal or all items proposed, or to reject any and all proposals received in response to this RFIQ, or to cancel the RFIQ.

### **Award of Proposal**

The contract will be awarded to that proposer whose proposed response and client references present a product that will be the most advantageous to West Bountiful City, considering all of the evaluation factors presented earlier.

## **1.7 Contract/Negotiations**

### **Contract Terms and Conditions**

Appendix A contains the Standard Professional Services Agreement that the City intends to use in awarding this proposal. Proposers should familiarize themselves with the terms and conditions

contained in the agreement and must note any exceptions, additions, or modifications they would propose. **BLANKET SUBSTITUTION OF THE PROPOSER'S STANDARD CONTRACT FOR WEST BOUNTIFUL CITY'S PROPOSED AGREEMENT WILL NOT BE PERMITTED.**

The complete agreement with the proposer is expected to encompass the Standard Professional Services Agreement contained herein.

### **Contract Negotiations**

West Bountiful City intends to make a preliminary selection in October 2010. The City will issue a letter of intent and complete contract negotiations with the successful proposer. A contract must be completed and signed by all parties concerned within three weeks from proposer selection. If this date is not met, and if the delay is not the fault of the City, the City may elect to cancel the letter of intent and award the selection to the next most responsive proposer. To provide for this contingency, each proposer must state in its proposal that the terms and conditions in the proposal will remain valid and in effect for at least 90 days from the proposal submittal date.

### **Prime Firm Responsibility**

West Bountiful City prefers to contract with a single or primary proposer. If you propose a multi-proposer or subcontracted approach, clearly identify the responsibilities of each party and the assurances of performance you offer. The prime firm will be responsible, and must take responsibility, for the entire contract performance whether or not sub-firms are used.

In firm/sub-firm arrangements involving more than one firm, the prime firm must assume full responsibility for the performance of the services.

The City will consider the selected proposer to be the sole point of contact with regard to contractual matters including the performance of services and the payment of any and all charges resulting from the services performed.

## **1.8 Payment Schedule**

### **Payment Schedule.**

Payment for services is obtained by providing an itemized billing of services performed organized by case or project. Payments are generally provided within 15 days of receipt of the invoice.

## **1.9 Miscellaneous**

### **No Discrimination in Employment**

In connection with the performance of work under this Agreement, the firm agrees not to discriminate in matters of hiring, discharge, promotion, demotion, compensation or other employment decisions against any person otherwise qualified, solely because of race, creed, color, religion, sex, age, national origin or ancestry; and further agrees to insert the foregoing provision in all subcontracts hereunder.

**News Releases/Advertising**

News releases and/or advertising pertaining to this procurement or any part of the subject shall not be made without prior, written approval of West Bountiful City.

**Confidentiality**

The City shall require the successful proposers' employees and the employees of any sub-firm to sign a confidentiality agreement concerning the business of the City, its financial affairs, its relations with its citizens, and its employees, and its businesses as well as any other information which may be specifically classified as confidential by West Bountiful City.

## **2 Background Information**

West Bountiful City transferred its Justice Court to the Davis County Justice Court on July 1, 2009. Prior to that time the City held sessions of court three hours per week on Wednesday afternoons.

The Honorable Judge Jerry Jensen, from the County, was sworn in as the West Bountiful City Justice Judge prior to the transition to accommodate the transfer of cases and workload.

The City's intention was to provide a full service Court with public access to a judge every working day. It was also the City's intention to more efficiently utilize taxpayers' funds by combining marginal case loads to more fully utilize the Court's time without duplication of costs for the same services.

The City has been very pleased with the performance of the Court, the increased service levels to those who need to use it, and the relationship that has been developed and maintained with the Court.

West Bountiful City values its relationship with the Court and desires that those who represent the City appropriately respect the both the Court and those who appear therein, while vigorously defending and advancing the cause of law-abiding residents who deserve the protection of the rule of law that they honor.

The City Prosecutor is charged with protecting the community from risks and influences that may damage the health, safety and welfare of our residents. For example, beyond Municipal Code enforcement, the City has faced environmental threats in the past from a global industrial company that wanted to construct a large plant that consumed fuels that are environmentally dangerous. Issues of air, water, noise, and ground water contamination and other environmental items are occasionally brought to the forefront of the City Council's attention. Experience with environmental law could be an asset in providing Counsel to the City as these issues arise. The City has retained special counsel in the past to work with some of these issues.

The City desires to receive "turn-key" services, such that, all preparations for cases including interfacing with State agencies for reports are handled by the Prosecutor's office. Standard police reports generated by the City will be provided by our Police Department.

### **3      Scope of Services**

West Bountiful City seeks the following general services. Please include in your proposal any additional services that you believe are essential or helpful from your professional experience. If these additional services represent an additional cost, please itemize those costs to the extent possible or represent them as a percentage of total effort/cost.

- Represent the City in litigation initiated to enforce ordinances
- Represent the City at the Davis County Justice Court for City matters
  - Routine traffic violations
  - DUI
  - Other violations
- Advise the Mayor, City Council, City Administrator and staff on enforcement issues and proactively bring to pertinent legal issues to the attention of the City
- Provide administrative services to the greatest possible extent with respect to discovery and other research to minimize staff time of the City, including the Police Department
- Coordinate with the City Attorney for the provision of legal services to the City
- Vigorously represent the residents of the City to promote fairness and preserve the rights of those who respect the ordinances, statutes, and laws of West Bountiful City, the State of Utah, and the United States as they apply.



## 4 APPENDIX A

### WEST BOUNTIFUL CITY PROFESSIONAL SERVICES AGREEMENT—PROSECUTOR

THIS PROFESSIONAL SERVICES AGREEMENT—PROSECUTOR (“*Agreement*”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, (the “*Effective Date*”) by and between WEST BOUNTIFUL CITY, a Utah municipal corporation (the “*City*”), and ~CONTRACTOR~, a ~CONTRACTOR FORM OF BUSINESS~ with its principal place of business at ~CONTRACTOR LOCATION~ (“*Contractor*”).

Contractor desires to provide certain professional services, as described below, on the terms and conditions of this Agreement. The City is willing to engage Contractor to provide such services on the terms and conditions of this Agreement.

NOW, THEREFORE, for valuable consideration, including the mutual covenants and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### SECTION I

##### 1.10

#### ENGAGEMENT

1. Engagement of Contractor. The City hereby engages Contractor to provide, and Contractor agrees to provide, professional prosecutorial services as more fully described in the Scope of Services attached as Exhibit A (the “*Services*”). Contractor agrees to provide the Services in accordance with the terms and conditions of this Agreement and all applicable local, state and federal laws, rules and regulations in effect at the time the Services are provided.
2. Standard of Care. Contractor accepts the relationship of trust and confidence established between the City and Contractor by the terms of this Agreement. Contractor will perform all Services under this Agreement in a skillful and competent manner, consistent with or in excess of the standards of skill, quality and care adhered to by recognized professionals in the same discipline in the state of Utah while performing services of a similar nature under similar circumstances. Contractor represents and warrants that it is qualified and skilled in the professional calling necessary to perform the Services. Contractor will use its best efforts to perform its obligations under this Agreement in an efficient, expeditious and economical manner, consistent with the best interests of the City and the professional standard of care set forth in this Agreement.

#### SECTION II CONTRACTOR’S RESPONSIBILITIES

1. Independent Contractor.

- A. The City engages Contractor as an independent contractor and not as an employee of the City. The Services shall be performed by Contractor or under Contractor's supervision. Contractor shall determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Contractor has no obligation to work any particular schedule (except for scheduled court appearances), or any particular number of hours or days. However, Contractor shall coordinate with the City in achieving the results and meeting the goals and deadlines established pursuant to this Agreement. Contractor retains the right to perform similar or different services for others during the term of this Agreement.
- B. Except as otherwise provided in the Scope of Services (Exhibit A), Contractor will be responsible for all costs and expenses incurred in performing the Services, including office overhead expense, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses. Reimbursable expenses, if any, are subject to written pre-authorization by the City. If authorized, reimbursable expenses shall include only those expenses actually, reasonably and necessarily incurred by Contractor in performing the Services, with no mark-up for overhead or profit.
- C. The personnel performing the Services on Contractor's behalf shall be under Contractor's exclusive direction and control at all times. Contractor will pay all expenses, including wages, salaries, fringe benefit contributions, payroll taxes, withholding, other taxes or levies and all other amounts due such personnel for the Services or due others as a result of the performance by such personnel of the Services. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including all reports for social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

- 2. Cooperation. The parties will cooperate with each other with respect to the Services. Contractor will report regularly to the City Administrator or his/her designee as provided in this Agreement, and will be available at all reasonable times to the City Administrator, City Attorney, and other City staff and consultants in connection with the Services. In advance of all critical decisions, Contractor will review relevant matters with the City Administrator in order to ensure that the Services proceed in a manner consistent with the goals and policies of the City. The City will cooperate in providing reasonably timely direction for Contractor when the City's decision is required.
- 3. Contractor's Principal. Contractor will designate in the Scope of Services (Exhibit A), or otherwise by written notice, a principal attorney ("**Contractor's Principal**") who will coordinate all phases of the Services and act as Contractor's duly authorized representative under this Agreement.

4. Key Personnel. Contractor represents that certain key personnel identified in the Scope of Services (Exhibit A) will perform and coordinate the Services under this Agreement. If any such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon the City's written approval. In the event the parties cannot agree as to the substitution of key personnel, the City will be entitled to terminate this Agreement. At the City's request, Contractor will promptly remove from performing the Services any personnel who fail or refuse to perform the Services in a manner acceptable to the City.
5. Licenses. Contractor represents and warrants that all personnel Contractor engages to perform the Services are and will be licensed members of the Utah State Bar who are qualified through experience to perform the Services; and that all non-licensed support personnel will perform only those functions that do not require licensure. Contractor will be responsible for any errors or omissions of personnel it engages to perform the Services under this Agreement.
6. Reports. Contractor will provide the City weekly written summaries of all prosecution matters pending or anticipated as part of the Services. Contractor will also regularly provide the City copies of all relevant pleadings, correspondence, and other documents Contractor or its subcontractors generate or receive in connection with the Services (collectively, the "**Documents**"). The City will have a non-exclusive and perpetual license to copy, use, or modify the Documents. Contractor will require all subcontractors to agree to provide the City copies of the Documents and grant the City a similar license to the Documents.
7. Indemnification. To the fullest extent permitted by law, Contractor will indemnify, hold harmless, and defend the City and its officials, officers, employees, and agents from and against any action, liability, claim, demand, damage, or cost (including reasonable attorney fees) arising out of the performance of, or failure to perform, the Services or any other obligation of Contractor under this Agreement; or the breach of any of Contractor's representations or warranties under this Agreement. Notwithstanding the foregoing, Contractor's obligations under this paragraph will not apply to the extent caused by the negligence or other fault attributable to the City or its officials, officers, employees or agents (other than Contractor or those acting on behalf of Contractor). Contractor will defend any action or other proceeding covered by this paragraph with counsel reasonably approved by the City. Contractor's obligations under this paragraph are not limited to any insurance coverage required under this Agreement.
8. Insurance. Without limiting Contractor's indemnification obligations under this Agreement, Contractor shall obtain and maintain during the term of this Agreement, at its own expense, a policy or policies of liability insurance of the type and amounts described below and satisfactory to the City. Contractor shall also require all of its subcontractors to obtain and maintain insurance meeting the same requirements.
  - A. Prior to commencing the Services, Contractor shall provide evidence satisfactory to the City (as provided below) that it has secured the following types and amounts of insurance:

- (1) Workers' compensation insurance covering all employees of Contractor as required by the laws of the State of Utah;
  - (2) Commercial general liability insurance covering third party liability risks, including contractual liability, in a minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury, and property damage, with a deductible of no more than \$10,000; and
  - (3) Professional liability insurance appropriate to Contractor's profession in a minimum amount of \$1,000,000 per claim, which shall be endorsed to include contractual liability, with a deductible of no more than \$10,000. Such insurance shall be maintained during the term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement.
- B. The commercial general liability policy shall contain the following provision, or Contractor shall provide an endorsement on a form approved by the City to add the following provision to the insurance policy: the City, its officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Contractor. Any insurance or self-insurance maintained by the City or its officials, officers, employees or agents shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.
- C. The workers' compensation policy shall contain the following provision, or Contractor shall provide an endorsement on a form approved by the City to add the following provision to the insurance policy: the insurer shall agree to waive all rights of subrogation against the City, its officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from Services performed by the Contractor.
- D. All policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies: (1) coverage shall not be suspended, voided, canceled or reduced except after thirty (30) days' prior written notice to the City; provided, however, in the case of non-payment of premium, at least ten (10) days' notice will be provided; (2) any failure to comply with reporting or other provisions of the policies, including a breach of warranty, shall not affect coverage provided to the City, its officials, officers, employees and agents.
- E. All Insurance is to be placed with insurers with a current A.M. Best's rating no less than B+:VIII, licensed to do business in Utah, and satisfactory to the City.
- F. Contractor shall furnish City with original certificates of insurance and endorsements

effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before Contractor commences the Services. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

- G. Contractor shall give the City prompt and timely notice of any claim, action, or demand arising out of the Services.
  - H. Contractor shall include subcontractors, if any, as insureds under its policies, or shall furnish separate certificates and endorsements for each subcontractor. All coverage for each subcontractor shall be subject to the requirements of this Agreement.
9. Accounting Records. Contractor will maintain complete and accurate records with respect to all amounts billed for the Services under this Agreement. Contractor will allow the City to inspect and copy such records during the term of this Agreement and for three (3) years thereafter.

### **SECTION III COMPENSATION**

- 1. Compensation. In consideration of Contractor's performance of the Services, the City shall pay Contractor compensation as specified in the Scope of Services (Exhibit A) ("**Compensation**"). Total Compensation including expenses under this Agreement shall not exceed City budgeted amounts without written approval of the City Administrator.
- 2. Extra Service. Contractor shall not receive additional compensation for any extra service without written pre-authorization by the City. The City shall pay Contractor for extra service in accordance with the fee schedule set forth in the Scope of Services (Exhibit A). As used in this paragraph, "extra service" means any work the City determines to be necessary for the proper performance of the Services that the parties did not reasonably anticipate would be necessary at the execution of this Agreement.
- 3. Payment of Compensation. Contractor shall submit invoices to the City on a monthly basis, or on such other basis as may be mutually agreed upon by the parties. Each invoice will be itemized, showing the number of hours worked per person and the nature of the Service performed. The City will pay Contractor within forty-five (45) days following the date of receipt of the invoice, unless the City disputes the amount of Compensation Contractor claims it is owed under this Agreement.

### **SECTION IV TERM AND TERMINATION**

1. Term. Unless sooner terminated or renewed as provided below, this Agreement will commence on the Effective Date and expire one year thereafter. This Agreement will automatically be renewed for successive terms of one year each unless either party terminates this Agreement as provided below.
2. Termination for Default. The City may terminate this Agreement upon five days' written notice in the event of Contractor's Default. For purposes of this Agreement, "**Contractor's Default**" means (a) Contractor's failure to comply with, or perform its obligations under, this Agreement; or (b) Contractor's fraud, misrepresentation, breach of fiduciary duty, breach of warranty, gross negligence, or willful misconduct in connection with the Services or this Agreement. In the event the City gives Contractor notice of Contractor's Default, Contractor will immediately cease providing the Services, and will cooperate fully with the City in transferring Contractor's responsibilities for the Services to such person or firm as the City designates.
3. Termination for Convenience. Notwithstanding any provision of this Agreement to the contrary, the City may terminate this Agreement at any time and for any reason upon 14 days' written notice to Contractor.
4. Termination by Contractor. Notwithstanding any provision of this Agreement to the contrary, Contractor may terminate this Agreement at any time and for any reason upon 30 days' written notice to the City.
5. Payment upon Termination. Upon the expiration or termination of this Agreement, the City shall pay Contractor only for Services that have been adequately completed as of the date of termination.
6. Remedies Cumulative. Each party's remedies for a default by the other party under this Agreement shall be cumulative of the non-defaulting party's remedies at law and in equity.

## **SECTION V GENERAL PROVISIONS**

1. Nondiscrimination by Contractor. Contractor represents and agrees that Contractor, its affiliates, subsidiaries, or holding companies do not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, handicap, national origin or any other protected classification under federal or state law. Such nondiscrimination shall include the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. City's Right to Employ Other Contractors. The City reserves the right to employ other contractors in connection with the Services at its own expense. Contractor will have no responsibility for the work of any such other contractor.

3. Conflicts of Interest; Prohibited Interests.

- A. The Contractor or its employees shall disclose financial interests that may foreseeably be materially affected by the Services performed under this Agreement, and prohibit such persons from making, or participating in making, decisions that will foreseeably affect such interests. Failure to do so constitutes Contractor's Default under this Agreement.
  - B. Contractor represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
4. Subcontracting. Contractor will not subcontract any portion of the Services without the City's prior written consent. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.
5. Prohibition against Transfers. Contractor shall not assign, delegate, or otherwise transfer this Agreement, or any right or obligation under this Agreement, directly or indirectly by operation of law, without the City's prior written consent of the City. Any attempt to do so shall be null and void.
6. Waiver. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual right by custom, estoppel, or otherwise.
7. Notices. All notices required under this Agreement shall be given in writing to the following addresses or such other addresses, including email, as the parties may designate by written notice:

To the City: West Bountiful City  
550 N 800 W  
West Bountiful, Utah 84087  
Attention: ~CITY ADMINISTRATOR~

To Contractor: ~CONTRACTOR NAME~

~CONTRACTOR ADDRESS~

Attention: ~CONTRACTOR'S PRINCIPAL~

Notice shall be deemed received as follows, depending upon the method of transmittal: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail, certified, return receipt requested, as of 72 hours after deposit in the U.S. Mail. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

8. Authority to Enter Agreement. Contractor warrants that it has all requisite power and authority to conduct its business and to execute, deliver and perform all of its obligations under this Agreement. The persons signing this Agreement below on behalf of the parties warrant that they have been duly authorized to do so and that each party is bound thereby.
9. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.
10. Attorney Fees and Costs. In the event of a dispute over or relating to the terms of this Agreement, or either party's performance under this Agreement, the prevailing party in any proceeding brought in connection with the dispute shall be entitled to recover from the other parties its costs, including reasonable attorney fees, whether incurred in litigation or otherwise.
11. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, irrespective of any conflict of laws provisions. The parties hereby consent to the jurisdiction of the courts of the State of Utah, or the courts of the United States of America located in the State of Utah, as the case may be, with venue in Davis County (or, for federal court, Salt Lake County), as the sole forum for any litigation arising out of this Agreement.
12. Days. Any term in this Agreement referencing time, days, or period for performance shall be deemed to be calendar days and not business days.
13. Entire Agreement. This Agreement contains the entire agreement of the parties with regard to its subject matter, and supersedes any prior or written statements or agreements between the parties in that regard. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties.
14. Binding on Assigns. Each and all of the covenants and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the respective parties.
15. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.



16. Captions. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.
17. Construction. Since the parties or their agents have participated fully in the preparation of this Agreement, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any party.
18. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation under this Agreement.
19. Incorporation of Exhibits and Other Documents. The recitals and exhibits of this Agreement, as well as Contractor's written proposal and other submissions to the City, are hereby incorporated into this Agreement by reference. Notwithstanding any provision of this Agreement to the contrary, in the event of any inconsistency between this Agreement and Contractor's proposal or other submissions, the provisions of this Agreement shall control.
20. References. All references to Contractor in this Agreement shall include all personnel, employees, agents and subcontractors of Contractor.

*[The remainder of this page is intentionally left blank.]*

**WEST BOUNTIFUL CITY,  
A Utah Municipal Corporation:**

**CONTRACTOR:**

By: \_\_\_\_\_

Craig S. Howe  
City Administrator

BY: \_\_\_\_\_

[NAME]  
[TITLE]

Approved as to legal form:

By: \_\_\_\_\_

Stephen B. Doxey  
City Attorney

Reviewed and approved for budget:

By: \_\_\_\_\_

Heidi Voordeckers  
Accountant

## **EXHIBIT A**

### ***Scope of Services***

**Description of Services:**

**Key Personnel:**

**Fee Schedule:**